

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,)	
)	
Plaintiff,)	
)	
v.)	No. 05-CV-329-GKF-SAJ
)	
TYSON FOODS, INC., et al.,)	
)	
Defendants.)	

**STATE OF OKLAHOMA'S RESPONSE IN OPPOSITION TO "THE
CARGILL DEFENDANTS' NOTICE OF JOINDER IN DEFENDANTS'
MOTION FOR SCHEDULING CONFERENCE" [DKT #1734]**

COMES NOW the Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma, and Oklahoma Secretary of the Environment, C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma under CERCLA, ("the State"), and submits this response in opposition to "The Cargill Defendants' Notice of Joinder in Defendants' Motion for Scheduling Conference" [DKT #1734].

1. The Cargill Defendants' Joinder should be denied for the reasons set forth in the "State of Oklahoma's Response in Opposition to 'Defendants' Joint Motion for Additional Time to Produce Expert Reports'" [DKT #1736], which is incorporated herein by reference.

2. To the extent not already addressed in that filing, the State responds to the additional arguments made by the Cargill Defendants in their Joinder as follows:

3. First, with respect to the Cargill Defendants' claim of prejudice, it should be noted that the Court's March 27, 2008 Order granting the State's request for mutual extensions of the non-damages expert disclosure deadlines does not make any determination that the Cargill

Defendants have been prejudiced by the brief extensions of the non-damages expert disclosure deadlines.¹ *See* DKT #1702. Rather, the Court found that the State had established good cause for the requested extensions based upon, *inter alia*, the fact that "Plaintiff did not receive the number of birds located within the watershed from Defendants until January, 2008." *See id.* Further, it should not be overlooked that the Court not only granted Defendants an equivalent extension of time to make their non-damages expert disclosures, but also granted Defendants (at the request of Defendant Peterson Farms) extensions of other dates in the Scheduling Order equal to the extension granted the State. *See id.* Thus, the suggestion that the Cargill Defendants have been prejudiced by the extensions is baseless. Finally, it must be noted that had they felt they had been prejudiced by the extensions, the Cargill Defendants should have moved for reconsideration or filed objections. They, however, did not.

4. Second, the Cargill Defendants contend that the State's production of its sampling and analysis materials and considered materials has been "piecemeal." This characterization should not be credited. *See* DKT #1736. The accompanying contention that the Cargill Defendants have thus been precluded from conducting a rebuttal test program during Spring 2008 lacks any foundation. Nothing has precluded the Cargill Defendants from doing sampling in 2005, 2006, 2007 or 2008. They have simply chosen not to do any. That the Cargill Defendants have chosen not to do any is no fault of the State.

WHEREFORE, in light of the foregoing, the Cargill Defendants' Joinder [DKT #1734] should be denied.

¹ In support of their argument the Cargill Defendants reference the March 26, 2008 telephonic hearing, but do not attach a copy of the transcript of that hearing to their filing.

Respectfully Submitted,

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